

Jessica's Law

Utah's Approach to Sex Offenders

April 2008

Utah's New Statutes for Sex Offenders

- The Utah State Legislative Session for 2007 passed a number of important bills affecting sex offenders. This legislation had strong support from the Governor's Office, the legislature, the Attorney General, the Board of Pardons, law enforcement, and prosecutors.
- These bills enhanced Utah's already tough sentencing practices and addressed a number of issues in sex offender sentencing and management. The major changes from 2007 included:
 - **HB 86 Penalties For Sexual Offenses and Kidnapping:** Increased penalties for serious sex offenses against children to 15 years to life with no possibility of probation.
 - Increased penalties when serious bodily injury occurs during the course of a sex offense.
 - Life without the possibility of parole for serious repeat sex offenders.
 - Expansion of the list of offenses which prohibit probation.
 - **HB 5 Internet Sexual Content-Protection of Minors:** Increased penalties for enticing a minor over the internet to include the possibility of a life sentence.
 - **HB 375 Sex Offender Restrictions:** Restricting registered sex offenders from locations where children are likely to be found.
 - **HB 228 Penalty For Homicide of a Child:** Makes the intentional or knowing murder of a child under 14 years of age a Capital Offense.
 - **HB 93 Capital Offense Amendments:** Provides that the commission or attempt to commit specified sexual offenses against a child as part of the commission of a homicide constitutes Aggravated Murder, a Capital Offense.
 - **HB 274 Violent Crime in the Presence of a Child:** Requires the Judge and Board of Pardons to consider it an aggravating factor during sentencing or release decisions if a violent act was committed in the presence of a child.

Changes from the 2008 Legislative Session

- **HB 13 Criminal Statute of Limitations Amendments:** Provides that prosecution of a person for any first degree felony sex offense may be commenced at any time.
- **HB 34 Email Information Required of Sex Offender:** Creates a 3rd degree felony for a sex offender who is required to register to fail to provide their internet identifiers.
- **HB 102 Child Abuse Homicide Amendments:** Clarifies that the offense of child abuse homicide does not apply under circumstances that constitute aggravated murder. Clarifies that the mental states referred to in the offense of child abuse homicide are only applicable to the element of the commission of child abuse, not to the element of causing the death of a child. Increases the penalties for child abuse homicide from a second to a first degree felony if the child abuse is done recklessly; increases child abuse homicide from a third to a second degree felony if the child abuse is done with criminal negligence and under circumstances not amounting to the type of child abuse homicide that is done recklessly.
- **HB 256 Jessica's Law** Makes it a 1st degree to engage in criminal solicitation to commit, or attempt to commit, a felony punishable by LWOP. Makes it a 1st degree punishable by imprisonment for 3 to life, to engage in criminal solicitation to commit, or attempt to commit, murder, child kidnapping, and certain sexual offenses. Makes it a 1st degree felony, punishable by 15 years to life, to engage in criminal solicitation to commit, or attempt to commit, rape of a child, object rape of a child, or sodomy on a child. Provides that a court may impose a lesser term if the court finds it is in the interests of justice. Increases the minimum term of imprisonment for rape of a child, object rape of a child, or sodomy on a child, to 25 years to life. And removes the authority of a court to impose a lesser sentence.
- **HB 314 Sexual Offenses-Definitions:** Amends the Object rape statute to include penetration by a human body part.
- **HB 492 Sex Offender Notification and Registration:** Extends duration of parole for felony sex offenders to the statutory maximum. (SO registration then becomes 15, 25, or lifetime) Adds attempts and agg kidnapping to lifetime registration. Felony or Class A Voyerism now registerable. Requires 10 years of compliant registration. Requires SO to be supervised under the stricter requirements of the sending and receiving states. Requires SO to register twice a year. Requires additional information to be provided.

Utah is tough on sex offenders

- Utah has sentencing statutes for sex offenders that result in a large number of sex offenders being incarcerated for their crimes.
- 28% of Utah's total prison population is incarcerated for a sex offense, compared to 9% in California, 15% in Texas, 11% in Florida, and 8% in New York (other state data from 2004/2005).
- Of the 28% of Utah's prison population made up of sex offenders, 53% are incarcerated with a maximum sentence of life—almost 15% of the total prison population.
- Last year, 26% of all felony sex offenders in Utah received a maximum sentence of life in prison.

In 1996, when the state had long minimum mandatory sentences for 1st degree sex offenses, only **13%** of felony sex offenders received 1st degree convictions with a maximum sentence of life. In 2006, **26%** of felony sex offenses received 1st degree convictions.

Indeterminate Sentencing Considerations

The most important consideration when evaluating a sentencing system is the impact on victims and society at large. In a mandatory minimum jurisdiction, an offender has little to gain by entering a plea to the criminal count as charged -- once convicted, the time spent in prison is concrete and absolute. Therefore, it is an easy decision for the offender to go to trial and "roll the dice" with a jury. More trials are held in mandatory minimum jurisdictions. Additionally, in order to preserve a semblance of a case against an offender where the victim is particularly vulnerable, it is more likely or frequent that a prosecutor will allow the offender to enter a plea to a lesser charge with a lesser penalty in order to spare the victim from the pains of testifying at trial. This is particularly true in sex offenses against children where victims are most vulnerable and where their testimony may be misperceived by a jury to lack credibility.

In contrast, Utah's indeterminate system provides incentive to the offender to enter a plea to a count as charged because the offender's prison sentence is not yet determined and the offender may focus on the minimum sentence given by the sentencing judge and hope to convince Board of Pardons to release him or her after the minimum years have been served. This results in fewer trials, fewer child witnesses, and fewer plea deals resulting in lesser penalties for the offenders. And the reality is that the BOP will identify dangerous recidivism risks and keeping them in prison for very long periods. In fact, with a ceiling of life in prison on many sex offenses, Utah sentencing laws actually have the capacity to punish offenders more than what most other states can.

What Utah plans to do in the future

- Governor Huntsman is interested in addressing the entire problem of sex offending by stressing offender accountability and punishment, as well as strong prevention measures that will keep Utahans from being victimized in the first place.
- The Governor's Office conducted a study on sexual violence in Utah. According to the results of the study, we know that, in Utah, very few victims of sexual assault ever report the event to the authorities. Therefore, most of the perpetrators of these crimes go undetected and will never be subject to mandatory minimum penalties or registration requirements.
- In fact, most children in Utah who are victims of sex offenses have been victimized either by a family member or someone they know well, and they will not report it.
- The Governor's office, with the assistance of experts in the field, is now in the process of developing a comprehensive strategy to address sexual violence in our state, including improvements to sex offender registration and an ongoing review of sentencing practices.
- Governor Huntsman is keenly aware and sincerely sympathetic of the losses to families and communities in Florida and Idaho and everywhere else these crimes occur.
- It is especially disconcerting when a convicted sex offender re-offends. These heart-wrenching cases naturally necessitate a review of the criminal justice system to see if the system is working and where the system can improve.
- While improvements will not restore the life of a murdered child or bring back innocence of a child who has been violated, they may assist in making the system better situated to address these crimes in the future.

In summary, Utah's present indeterminate sentencing structure, while admittedly operating on a gentle balance largely reliant on a stable Board of Pardons and Parole, is working well and best serving victims and protecting society. This balance has been proven most effective over time and in comparison with Utah's experience with mandatory minimums. That being said, can our system improve? Yes! The Sentencing Commission will continue to study and identify ways our system can be improved to make our communities safer.